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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JOSEPH RAYMOND MCCOY,

12 Plaintiff,

13 v.

14 KATHILEEN ALISON, et al.,

15 Defendants.  
16

No. 1:22-cv-00234 JLT EPG (PC)

AMENDED ORDER ADOPTING IN  
FULL THE FINDINGS AND  
RECOMMENDATIONS AND DIRECTING  
PLAINTIFF TO PAY THE \$402.00 FILING  
FEE IN FULL

(Doc. 6)

17 The assigned magistrate judge issued Findings and Recommendations, recommending  
18 that Plaintiff not be allowed to proceed *in forma pauperis*. (Doc. 6.) The magistrate judge found  
19 Plaintiff is subject to the three strikes bar under 28 U.S.C. § 1915(g). (*Id.* at 2-3.) The  
20 magistrate judge also found the allegations in Plaintiff's complaint do not satisfy the "imminent  
21 danger of serious physical injury" exception to Section 1915(g). (*Id.* at 3-4.) Therefore, the  
22 magistrate judge recommended Plaintiff be directed to pay the filing fee in full to proceed with  
23 this action. (*Id.* at 4.)

24 The Findings and Recommendations were served on Plaintiff and contained notice that  
25 any objections thereto were to be filed within fourteen days from the date of service. (Doc. 6 at  
26 5.) In addition, Plaintiff was "advised that failure to file objections within the specified time may  
27 result in the waiver of rights on appeal." (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39  
28 (9th Cir. 2014); *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) On March 21, 2021,

1 Plaintiff filed a motion requesting a fourteen-day extension of time to file his objections (Doc. 7),  
2 which was granted the extension on March 22, 2022 (Doc. 8).

3 In his objections, Plaintiff does not deny the findings of the magistrate judge related to the  
4 number of cases he previously filed that counted as “strikes.” Instead, Plaintiff maintains he  
5 satisfies an exception to the three- strikes rule for imminent danger. (Doc. 10 at 2-3.) In support  
6 of this assertion, Plaintiff contends he may be transported from general population to the special  
7 needs yard, which he believes is cruel and unusual punishment under the Eighth Amendment.  
8 (*Id.*) Importantly, the imminent danger exception requires a showing that the prisoner “is under  
9 imminent danger of *serious physical injury*.” 28 U.S.C. § 1915(g) (emphasis added); *see also*  
10 *Ray v. Lara* 2022 U.S. App. LEXIS 9615 at \*19 (9th Cir. April 11, 2022) (“in order to qualify for  
11 the § 1951(g) imminent danger exception, a three-strikes prisoner must allege imminent danger of  
12 serious physical injury that is both fairly traceable to unlawful conduct alleged in his complaint  
13 and redressable by the court”). As the magistrate judge determined, there is no explanation as to  
14 how transportation to the special needs yard presents an imminent danger of physical harm to  
15 Plaintiff. Consequently, Plaintiff does not carry the burden to show he qualifies for the exception  
16 identified in Section 1915(g).

17 According to 28 U.S.C. § 636(b)(1)(C), this Court conducted a *de novo* review of this  
18 case. Having carefully reviewed the entire matter, the Court concludes the Findings and  
19 Recommendations are supported by the record and by proper analysis. Thus, the Court

20 **ORDERS:**

- 21 1. The Findings and Recommendations entered on March 1, 2022 (Doc. 6), are  
22 **ADOPTED** in full.
- 23 2. Pursuant to 28 U.S.C. § 1915(g), Plaintiff is not permitted to proceed *in forma*  
24 *pauperis* in this action.
- 25 3. Within 30 days from the date of service of this order, Plaintiff **SHALL** pay in full  
26 the \$402.00 filing fee for this action; and

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1           4.     Plaintiff is advised that failure to pay the required filing fee as ordered will result  
2                     in the dismissal of this action without prejudice.

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4     IT IS SO ORDERED.

5     Dated:   **April 13, 2022**

  
UNITED STATES DISTRICT JUDGE